Pine Lumber Cashway, Inc. *and* Local 458, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Cases 7-CA-19886, 7-CA-19887, 7-CA-20002, and 7-CA-20003

26 August 1983

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS JENKINS AND HUNTER

On 14 January 1983 Administrative Law Judge George F. McInerny issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief and Respondent filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge, as modified below, and to adopt his recommended Order, as modified herein.

The facts as found by the Administrative Law Judge reveal that Ypsilanti Yard Manager Alton Ford engaged in conversation with the yard employees shortly after the Union filed its representation petition. During these conversations, Ford predicted the economic consequences of unionization. Crediting the testimony of employee Arthur Lewis, the Administrative Law Judge also found that Ford said that Respondent would "have to start getting down on [the employees'] backs" and that Respondent's president, Braver, would show up at the yard every morning.

The General Counsel excepts to the Administrative Law Judge's failure to find, as alleged in the complaint, that Ford's comments constituted a threat to impose more onerous working conditions if the Union were voted in. We find merit in this exception and find that Respondent, through Ford, violated Section 8(a)(1) by threatening to impose more onerous working conditions.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Pine Lumber Cashway, Inc., Ypsilanti and Brighton, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Insert the following as paragraph 1(d) and reletter the subsequent paragraphs accordingly:

"(d) Threatening to impose more onerous working conditions if the employees select the Union as their collective-bargaining representative."

2. Substitute the attached notice for that of the Administrative Law Judge.

[1] The General Counsel has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

In the absence of exceptions thereto, Chairman Dotson and Member Hunter adopt, *pro forma*, the Administrative Law Judge's finding that Respondent violated Sec. 8(a)(1) of the Act by circulating a letter in which Respondent asked its employees to inform Respondent if anyone caused them trouble at work or "otherwise attempts to coerce [them] into signing a card or supporting the union . . . ."

[2] The General Counsel has also excepted to the Administrative Law Judge's failure to find an additional 8(a)(1) violation in Alton Ford's comment "What was going on," which was made to certain yard employees prior to the conversations discussed in the text above. The Administrative Law Judge noted that this question might have been considered an unlawful act of interrogation had it been alleged in the complaint as such or had it been fully litigated. Contrary to the Administrative Law Judge's misimpression, the complaint did, in fact, allege that Ford engaged in various acts of unlawful interrogation at or about the time of his conversations with the yard employees. However, to find an additional violation herein where the Administrative Law Judge has already found that other incidences of interrogation were unlawful would merely be cumulative and would not in any way affect the remedy recommended by the Administrative Law Judge. Without passing on the legality of the comment, Chairman Dotson is of the view that where, as here, such an additional finding would be cumulative and would not change the remedy, the General Counsel need not file exceptions to an administrative law judge's failure, whether inadvertent or otherwise, to make the additional finding.

In sec. III,C,2, the Administrative Law Judge made certain comments implying that Operations Manager Morris Law could only think that, from the entirety of the circumstances surrounding Roger Christie's discharge, Christie was an active participant in what looked to Law to be a theft of materials by a customer. We view these comments to be inappropriate, for they appear to be the Administrative Law Judge's personal interpretation of what Law might have been thinking. There is no record testimony by Law that he entertained such thoughts. Accordingly, we hereby disavow these comments.

In that same section, the Administrative Law Judge notes that former employee Richard Haneklau had been discharged in 1980 for loading a customer's truck without a yellow ticket. However, the testimony is clear that Haneklau was actually discharged for loading items that did not appear on the yellow ticket. Our correction of this inadvertent error does not affect our conclusion.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT grant pay increases to our employees to discourage them from selecting a union as their bargaining representative.

WE WILL NOT send letters to our employees asking them to report union activity to us, or our officers or agents.

WE WILL NOT coercively interrogate our employees concerning their union activities.

WE WILL NOT threaten to impose more onerous working conditions on our employees if they select the Union as their collective-bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in their exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

LUMBER CASHWAY, INC.

DECISION

GEORGE F. MCINERNY, Administrative Law Judge: These cases commenced with the filing of charges by Local 458, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein referred to as the Union, on October 6, 1981, in Cases 7-CA-19886 and 7-CA-19887. On November 5, 1981, the Union filed additional charges in Cases 7-CA-20002 and 7-CA-20003. All of these charges contained allegations that Pine Lumber Cashway, Inc., herein referred to as Respondent or the Company, had committed violations of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (29 U.S.C. § 151, *et seq.*) herein referred to as the Act. On November 30, 1981, the Regional Director for Region 7 of the National Labor Relations Board, herein referred to as the Board, issued an order consolidating these cases together with a consolidated complaint and notice of hearing. Thereafter, Respondent filed an answer denying the commission of any unfair labor practices.[1]

Pursuant to the notice by the Regional Director, a hearing was held before me at Detroit, Michigan, on September 7 and 8, 1981, at which time all parties were represented and were permitted to introduce testimony and documentary evidence, to examine and cross-examine witnesses, and to argue orally. After the conclusion of the hearing Respondent and the General Counsel submitted briefs, which have been carefully considered.

Based on the entire record of this case, including my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent Pine Lumber Cashway, Inc., is a Michigan corporation having its principal office and place of business in the city of Detroit where it is engaged in the retail sale and distribution of lumber and related products. In addition to its principal office and lumber yard in Detroit, it maintains other locations in the State of Michigan including one at Brighton and another at Ypsilanti, which are the only facilities involved in this proceeding. Respondent, in the year ending December 31, 1980, which period is representative of its operations at all times material herein, received gross revenues in excess of $500,000 of which goods and materials valued in excess of $50,000 were transported and delivered to its locations in Brighton and Ypsilanti directly from points outside the State of Michigan. The complaint alleges, the answer admits, and I find, that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the answer admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The October 20 Letter*

While most of the incidents forming the subject matter of this case occurred either at Ypsilanti or Brighton, there was one matter, alleged as a violation of Section 8(a)(1) of the Act, which apparently affected employees at both locations. This was a letter addressed by Company President Joseph Braver to individual employees. Along with the usual procompany language appeared the following paragraph:

> One last thing you should know—under the law, you have a right to vote "*NO UNION*" regardless of whether you previously signed an authorization card. It is your secret ballot vote that will determine the issse, not whether you signed an authorization card; and if anyone causes you trouble at work, or otherwise attempts to coerce you into signing a card or supporting the union, you should let your supervisor know or contact the NLRB yourself so that any *unlawful* activity can be stopped.

The final clause in this paragraph contains language similar to that found to be unlawful by the Board. *J. H. Block & Co.*, 247 NLRB 262 (1980). Respondent argues that the addition of a reference to "the NLRB" makes the impact of this language different from language re-

[1] At the hearing the General Counsel moved to amend par. 8(h) of the complaint to allege that only one employee was given a pay raise to discourage him for selecting the Charging Party as his collective-bargaining representative. Respondent then moved to amend its answer to admit this allegation. Both the amendments to the complaint and the answer were allowed.

questing employees to report incidents of harassment or coercion only to the employer. I can see that there is some distinction, but I do not agree that the difference is so great as to allow me to disregard Board precedent. The inclusion of the employer, or its supervisors, as reporting points for such incidents still tends to encourage employees to report to the employer the identity of any union card solicitors who in any way approach employees in a manner subjectively offensive to the solicited employees, and of correspondingly discouraging card solicitors in their protected organizational activities. (*J. H. Block & Co., supra* at 262.)

Accordingly, I find that by sending the October 20, 1981, letter to its employees, Respondent has violated Section 8(a)(1) of the Act. See also *Bil-Mar Foods*, 255 NLRB 1254 (1981); *Bryce Corp.*, 261 NLRB 1154 (1982).

B. *The Incidents at Ypsilanti*

1. The September conversations

The Company's Ypsilanti yard opened about 6 years before the hearing in this case. Alton Ford has been the yard manager for that entire period. In September 1981 there were 19 employees, including 7 yardmen. On a Friday in September (probably September 25) Ford received a copy of the petition filed by Teamsters Local 953 in Case 7-CA-16530, requesting that an election be held in a unit consisting of laborers, truckdrivers, customer service employees, and hi-lo drivers at the Ypsilanti location. Ford testified that he was concerned because no one had told him of any union activity in the yard. He notified Company President Braver, and, at the latter's request, drove into Detroit to deliver the petition to Braver.

Ford testified that he received no instructions on how to handle the matter. However, his curiosity apparently got the better of him and in the following week he called his yard employees in to his office individually. These conversations were the subject of testimony by employees Douglas L. Bradford and Arthur Lewis, as well as by Alcon Ford.

Bradford said that Ford called him into the office around the end of September. Ford told Bradford that if they tried to get a union into the yard, Braver would close the yard, padlock the gates, and send all the trucks back to Detroit; or would go to a self-service operation like Church's.[2] In any event, Bradford would be out of a job.

Lewis quoted Ford, in much the same vein, as saying that if the Union was voted in Braver would come up and pull the trucks out of the yard, send them back to the main yard in Detroit, and padlock the doors. Further, Ford told Lewis, if the Union were voted in the Company would cut out most of the jobs for the people in the yard. Lewis, Bradford, and two other employees, Argo and Bergeron, would more than likely be laid off. Ford also said that the Company would "have to start getting down on (the employees') backs," and that Braver would be up at the facility every morning. Lewis had never seen Braver at the Ypsilanti facility up to that time.

Ford testified that he wanted to know what was going on, that he had not known of any union activity in the yard,[3] so he asked the employees he called in to review "what was going on." While not specifying the individual replies he received to this question, Ford stated that "they indicated that they wanted the right to vote, as to whether they would have a Union or not have a Union."

Ford then outlined to the employees what he described in his testimony as his personal feelings on the subject.[4] He then told them what could possibly happen if the Union got in and they had to pay higher wages. He said that the Company, in these circumstances, would have to take some action to remain competitive and stay in business. He more or less admitted that he had told the employees that padlocking was "a possibility [that] could happen if we were not competitive and we drove our business away. There would be no alternative." He was less equivocal in admitting his references to Church's, stating that if the Company were forced to go into a cash-and-carry operation to remain competitive they would not need so many employees.

These accounts of this incident by Bradford and Lewis on one hand, and Ford on the other, differ only insofar as Ford's version indicated that the layoffs and padlocks would result only if Respondent were unable to remain competitive. Ford's demeanor impressed me as candid and straightforward. He indicated that at the outset of the conversations with the employees he asked them what was going on, a question which might have been considered an improper interrogation if it had been alleged as such in the complaint or fully litigated herein. Ford was frank and open in his description of what occurred at the Ypsilanti yard in late September.

Lewis and Bradford also impressed me, although I think Bradford exaggerated his skill at operating the hi-lo. In any event it seems to me that both employees shut out of their minds the cautionary words Ford used to preface his remarks. I find that Ford did use those cautionary words, conveying to the employees that if the Company were forced to pay increased benefits to remain competitive it would have to take economically justifiable means to stay in business, or to go out of business. I find no violation of law in these circumstances. *Chester Valley*, 251 NLRB 1435 (1980).

2. The October conversations

On the evening of the first Monday in October the Union held a meeting at its hall in Detroit. Both Lewis and Bradford attended the meeting. Ford found out about the meeting by listening to talk by employees at the sales counter just outside his office. On the morning after the meeting Ford called Bradford into his office. Bradford testified that Ford said that he understood Bradford had gone to a union meeting the night before,

[2] A competing lumber dealer in the area.

[3] He also stated that he wanted to counteract the influence of older, presumably more sophisticated, union organizers on the younger employees.

[4] He testified that no one from the central office had instructed him to say anything to the employees.

and asked him what he thought about the Union. Bradford replied that he thought it was great, the Union and the benefits they would get from it. Ford then said that was all he wanted to know.

Lewis testified that, a few days after the meeting in October, he and an employee named Bob Coblentz were called into Ford's office, where Ford asked them what they thought about the union meeting. Lewis said he was going to vote against the Union and Coblentz stated, somewhat vaguely, that he "liked the situation."

Ford recalled asking a number of employees about how the meeting had gone. According to his recollection some said "good," and some did not reply at all. Ford could not remember what Bradford's response was.

In these incidents, I find that Ford's inquiries, unaccompanied by any guarantees against retaliation, and without any legitimate business justification, constitute a violation of Section 8(a)(1) of the Act. *Parkview Acres Convalescent Center*, 255 NLRB 1164 (1981).

3. The layoff of Douglas Bradford

Bradford was employed by Respondent as a yardman and customer service representative at the Ypsilanti yard in May 1980. He testified that he did general yard work, but was considered the most proficient in driving the hi-lo,[5] a materials handling machine, and that he spent a lot of his time driving the hi-lo.[6]

In August 1981 Respondent suffered a sharp reduction in sales at the Ypsilanti yard. Ford, who kept a running record of sales, was concerned, but in September sales were up in relation to August and to September 1980. Then in October they slipped again, the total for the month ending up 30 percent less than the same month in the year before. Noting this decline during the month, Ford determined that one of the yardmen had to be laid off.[7]

Bradford was the third man in order of seniority, but, as Ford stated, the Ypsilanti yard had never had a layoff before, and he did not consider seniority controlling in this situation.[8] Ford communicated his decision to Braver, then reviewed his records and considered the personal situation of each of the six yard employees.[9] He knew that Bob Coblentz was recently married and had a child, or was expecting one. David Smith was the sole support of his widowed mother. Randy Bergeron was responsible for the support of two children, and both Arthur Lewis and Billy Argo were expectant fathers.[10] Ford knew that Bradford was receiving a military pension, and his wife had a full-time job. She had two children but they were living with their father at some distance from Ypsilanti. Ford reasoned that under these circumstances Bradford was in the best position to weather the layoff, so determined to let him go.

On October 31, Ford called Bradford into his office and told him he was laid off because of lack of business.[11]

There is no question that Respondent's economic problems were real. Loss of sales in a retail business inevitably means loss of profits, unless by trimming overhead or payrolls, those sales losses can be offset. Layoffs, while personally distressing to those affected, have been and continue to be an accepted method for reducing wage costs. In this case the declining sales figures seem to me to furnish a legitimate economic justification for a layoff. As far as the selection of Bradford is concerned, there had been no layoffs before at Ypsilanti, and no precedent had been set for the application of any particular standards. The method which Ford used, reviewing the personal situations of each of the employees, seems, in the circumstances of this case, to have been considerate, even humanitarian, in its scope. There is no evidence here, on Ford's part, of antiunion hostility, and no evidence that his decision to lay off Bradford was prompted by any reason other than those he gave in his credible testimony. Accordingly, I find no violation of law in the layoff of Douglas Bradford.

C. *The Incidents at Brighton*

1. The September conversations

On September 3, 1981, two union representatives were in the yard office at Respondent's Brighton yard.[12] Employees Roger Christie and Keith Hutchins were also present, and the union agents gave them union authorization cards to sign. Christie signed a card. Hutchins had been given a card some time before, and gave that to the agents

In the meantime Operations Manager Morris Law was informed by one of the sales people that the agents were out in the yard talking to employees. Law wondered why the business agents had not come in to let him know they were there as they had in the past. Later he asked Christie and an employee named Donald Fillion separately if the business agents had been in the yard. When they replied in the affirmative, Law asked what they wanted. Christie and Fillion replied that they passed out cards. According to Law, he said nothing further at

[5] Variously spelled in the record and briefs.

[6] Bradford was unable to give any specifics as to his alleged skills, and his claims were contradicted by Ford. Arthur Lewis, the only other Ypsilanti employee who testified, did not corroborate Bradford's testimony. Since I found Ford to be more credible than Bradford, I believe his version that Bradford was only one of a number of employees used to drive the hi-lo.

[7] Ford was also aware of the economic problems in the automobile industry, and of the fact that many of Respondent's customers were employed in that industry in several plants in and around Ypsilanti.

[8] Seniority was followed in assigning vacations.

[9] Ted Coblentz was the yard foreman and was not considered for layoff.

[10] Lewis corroborated that he in fact was expecting to become a father at that time.

[11] At this time Bradford asked if he was being laid off because of an incident which happened the week before. Both Bradford and Ford testified about a curious encounter involving a mutual friend named Geraski. However, the General Counsel did not persuade me that the incident had anything to do with Bradford's union or concerted activities. The only person who could have shed any light on the matter was Geraski and he did not testify. I have not considered the incident in this decision.

[12] The union representatives were there because the Union represents employees at Respondent's main yard in Detroit. Employees from that yard apparently have been working in Brighton, where they remain permanently represented by the union but not in a bargaining unit composed of Brighton employees. One of these union employees was Yard Foreman Robert Leland.

that time, but did call Detroit to tell Braver what was going on.

There is some conflict in the testimony over some additional things that were said by Law. The disagreement is not so much over what was said as when it was said. Christie and Fillion indicated it was on that same day, September 30, and Law recalled another meeting on the next day, October 1. Since I credit Law on these conversations I find that Law called Fillion and Christie separately into his office the next day.[13] Beyond this point it is generally agreed that Law asked Christie and Fillion what each thought about the Union, and what the Union was doing in there. He then stated certain possibilities if the Union came in. He said that if the Company had to negotiate a contract which would cause profits to go down, they could go to a self-service type of operation and the employees could be put on part-time.

This situation is analogous to that at Ypsilanti. Law, like Ford, told the employees what could happen if the Company agreed with the Union on increased wages and benefits, and to that extent I find that part of the conversation with each employee did not violate the law. The interrogations of these two employees about the Union and their thoughts about the situation, with no assurances against possible retaliation, I find to have violated Section 8(a)(1) of the Act.[14]

2. The discharge of Roger Christie

Christle beqan work in March 1980 as a yardman and part-time truckdriver at Respondent's Brighton yard. There is no indication in the record that he was other than a good employee, although, because of the illness of both his mother and father, he had missed work on a number of occasions, including times when he did not call in.

On Saturday, October 17, Christie was working as a yardman in a storage yard across some railroad tracks from the main yard. He was engaged in waiting on one customer when another drove up in a truck and asked Christie where he could find shingles of a certain color. Christie told the customer he would be with him in a few minutes, whereupon the customer drove his truck over to where the shingles were kept, backed the truck up and started loading shingles into the truck.

There was considerable, sometimes conflicting, testimony concerning Respondent's procedures and practices. There was no issue about the procedure. Customers come in to Respondent's sales area where they tell a salesman what they want to buy. The salesman then fills out a multiple page form listing the items ordered and the prices of those items. The customer goes to a cashier, pays for the materials, and is given at least two copies of the order sheet (or ticket). One of these copies is apparently yellow in color because it was referred to throughout the hearing as the "yellow copy" or "yellow ticket." The customer then proceeds with his vehicle to the yard, gives the yellow ticket to the yardman who then loads the vehicle with the material listed on the ticket. The ticket serves both as an order to the yardman and a receipt showing that payment has been made.

The conflict came in discussions about the actual practices dealing with the yellow tickets at the Brighton yard. Fillion and Christie testified that there were exceptlons to the policy with respect to one or two contractors who were permitted to come in to the yard, load their trucks, then check with the office on the way out. In addition Christie stated that at times when the yard was busy customers frequently loaded their own trucks. Law and Leland stated that only one contractor was allowed to load wlthout a yellow ticket and that was based on long experience with that contractor's integrity. Leland did say that when things were busy people would begin to load, but employees were required to get the ticket as soon as they could get to it. This practice of requiring the ticket before loading was not written down anywhere, but according to Law the requirement was emphasized at employee meetings. There was no question that the policy was in effect and was a firm policy.

When Christie finished waiting on his customer on October 17 he went over to the second customer who had finished loading the shingles. The customer asked for three or four rolls of roofing. Christie directed him over to another area and threw a couple of rolls of roofing in the truck. At this point Law came over to where Christie and the customer were.[15] Law noted what to him seemed unusual, that the shingles were black and the roll roofing was green. As he explained it black shingles and green roll roofing would look peculiar if used on the same house. His curiosity aroused, Law asked Christie for the customer's yellow ticket. Christie did not have it, so he went over and asked the customer for the ticket. The customer did not have it, but said an employee in another part of the yard had it. Christie asked the other employee but he did not have it either. On questioning by Law, the customer first said he was picking up the material for somebody else. When asked who, the customer said he did not know, but was "supposed to meet this guy down the street, and I'm going to follow him out to the job site." At this, Law told Christie to unload the truck and returned to the office.

Law thought about this incident and determined to fire Christie. He had a letter drawn up informing Christie that his loading of a customer without a yellow ticket was "totally against company policy," and that Law was going to impose "some type of discipline."[16] According to Law's credible testimony, he was 95 percent sure Christie was going to be fired that day, but he wanted to give him a chance to defend himself. Accordingly, Law

[13] The reasons why Hutchins was not called in will be developed below.

[14] I noted that Christie, when first asked, said that he did not tell Law that he had signed a card because he was concerned about revealing that fact to Law. Later, on cross-examination, Christie stated that they all had told Law that they had signed cards. This does not affect my finding here, since Law himself admitted the interrogations, but it does reflect on Christie's own credibility.

[15] Up to now I have relied on Christie's testimony for these findings. However, based on his demeanor, and his reversal of his testimony on whether he told Law he had signed a union card, I do not credit Christie's account of the rest of the incident. I found Law to be a forthriqht and candid witness and I rely on his testimony on what happened next.

[16] At the same time Law had another letter typed issuing a reprimand to Christie for excessive absenteeism, but Law testified that this had nothing to do with the discharge.

called Christie up to his office, gave him both letters, and let him read them. Law then asked if he had any explanation of what had gone on out in the yard earlier. Christie made no reply and they sat there in silence for what Law estimated to be 5 minutes. Law was waiting for some defense, but Christie made none, finally asking Law what he was going to do to him. Law then said "Roger, you've forced me to terminate you." Christie got up, punched out, and left.

With regard to this incident, the General Counsel has shown Christie's union activity in the signing of a union authorization card. He has shown company knowledge, or at least suspicion, of Christie's participation in that activity by the late September or early October interrogation. I have found that that interrogation violated the law, and that similar interrogations at Ypsilanti in the same general time period also violated the law. I have likewise found that the October 20 letter from Company President Braver contained a phrase which violated the law. These incidents certainly demonstrate an aversion if not outright hostility by the Company, to its employees' attempts to unionize. Thus the discharge of Christie only 10 days after the filing of an election petition by the Union in Case 7-RC-15547 serves to raise a question of whether that discharge constituted a further manifestation of that opposition. It is apparent then, that the General Counsel has established a *prima facie* case under the standards established in *Wright Line*, 251 NLRB 1083 (1980). Under those standards, the burden falls upon Respondent to demonstrate that it would have done what it did, in this case discharging Christie, in the absence of his established protected conduct.

The evidence adduced by Respondent shows that the yellow ticket policy was clear and unvarying. There was only one exception, Jerry's Building Company, and Law testified that no other exceptions could be made unless they had his personal approval. Law's description of his conversation with the customer can lead only to the conclusion that this person was attempting to steal merchandise from the Company. Naturally Law would suspect that an employee who was continuing to load materials on to the customer's truck was actively cooperating in the theft. Christie himself agreed that he would have thought the same thing. There is no question in my mind that this incident furnished grounds for discharge, but, even then, Law did not take the final step until he had afforded Christie the opportunity to offer some sort of excuse of explanation. When none was forthcoming, Law discharged him.

There is no substantive evidence here of disparate treatment. Christie and Fillion testified vaguely and unconvincingly of exceptions to the yellow ticket rule. Leland did say that things got backed up sometimes, but in this instance there is no explanation why Christie did not ask for the ticket from the second customer as soon as he broke away from waiting on the first customer, but continued to load materials into the second customer's truck. Then, when confronted later in Law's office with a request to explain himself, Christie sat mum, giving neither explanation, excuse, nor apology. In these circumstances what was Law to think?

The only testimony concerning other employees was Law's identification of a Richard Haneklau, who had been discharged in the summer of 1980 for loading a customer's truck without a yellow ticket.

Thus I find that Respondent has shown that Christie would have been discharged whether he had been involved in protected activity. *Central Freight Lines*, 255 NLRB 509 (1981).

3. The discharge of Keith Hutchins

Hutchins was hired on April 6, 1979, on the recommendation of Yard Foreman Bob Leland[17] as a truckdriver and yardman. Unlike Christie, Hutchins was not a good employee. Law, Leland, and Hutchins himself testified as to a long history of mostly minor problems Hutchins had with supervisors and customers during his employment. Apparently he was short-tempered, and tended to be lax in carrying out assignments. He had a habit of forgetting items to be delivered when driving, and, by his own admission, did not like the day-to-day contact with customers and salespeople in the yard. In March 1981 Law had a talk with Hutchins about the latter's attitude, which resulted in Hutchins' statement that he understood he had a problem and would try to correct it. Law told him that he would receive some sort of reprimand, or some sort of "proceedings taken" if he did not improve.[18]

Then, in July, Hutchins had problems with an assistant manager, and drove his truck over some drain tile. Law wrote out a letter suspending Hutchins from driving for a period of 2 weeks for these infractions. The suspension from driving did not involve a suspension from work. Hutchins continued to work in the yard and suffered no loss in pay. Things apparently worked out well, so well, in fact, that Law continued the suspension for another few weeks, then, on Hutchins' threat to quit, put him back on the truck.

One of Hutchins' main problems was that he could not get along with Leland. According to Christie the relations between Leland and Hutchins were a "war" for the last 4 to 6 months of Hutchins' employment at Brighton. Indeed, Leland had recommended two or three times in the summer and early fall of 1981 that Hutchins be discharged by Law, who solely administered the power to hire and fire, but did not follow these recommendations.

During the week of September 21 Law was on vacation. When he returned to work on September 28 he received two reports concerning Hutchins. The first was from Leland, who told Law that Hutchins had failed to follow orders on the Friday previous to deliver a roll of roofing. On being told to deliver the roll Hutchins had refused, saying it was out of his way. The roll was still in the yard on Monday morning. Leland again recommended that Hutchins be discharged. Law replied that he would look into it.

Later that same morning Law received a telephone call from a customer at a company named North Elec-

[17] Leland testified that he had known Hutchins' family and Hutchins himself for many years.

[18] There was never any indication given to Hutchins that he would be discharged if this conduct continued.

tric. The customer told Law that he had a driver who was very uncooperative on a delivery the prior Thursday. The customer said he had asked the driver to back into a garage and unload, but the driver refused, continuing to comment that, with the attitude and mannerisms the driver had, he was about ready to send the load back and discontinue doing business with the Company. Law again said he would look into the matter. Law then went to Hutchins for an explanation. Hutchins said the load was set up as a dump load and that he did not have to back into a garage and unload there.[19] Hutchins then added, as Law noted, in a sarcastic way, "Well, the customer did not send that load back, did he?"[20]

According to Hutchins' own version of the incident at North Electric, he did refuse to unload by hand and argued with the customer about backing the truck into the customer's garage and dumping the load there, and about dumping the load on a recently paved spot outside the garage. Finally Hutchins dumped it on a dirt area beside the garage, and, at the customer's request, cut the bands off the load. The customer proceeded to load the material into his warehouse by himself. Hutchins returned to the yard.

After his conversation with Hutchins, Law testified that he was upset about the incident, but more upset that Hutchins apparently just did not care about what he had done. He reviewed Hutchins' entire record and decided to discharge him. He postponed implementing this decision until Friday in accordance with what he described as his general practice of terminating employees at the last day of their workweek.[21]

After this, on Wednesday, September 30, came the incidents involving the Union agents described above.[22] In Law's conversation with Braver reporting on the union activity, Law asked whether he should continue with his plan to discharge Hutchins. Braver told him to look at the whole situation and not to let the Union alter his decision at all.

On October 2 Law called Hutchins in, gave him his check, and the letter of discharge, commenting that this was because of Leland's recommendations and the complaint from the customer at North Electric. Words were exchanged and Hutchins left.

This situation presents much the same factors as the Christie discharge, with one significant difference. Hutchins, like Christie, had engaged in union activity. However, in this instance I credit Law's testimony that the decision to terminate Hutchins was made before the onset of that activity.[23] I base this finding not only on Law's demeanor, but on the logic of the circumstances he related, and the combination of the Leland recommendation, the North Electric incident, and Hutchins' lack of concern over that incident. There is no evidence of disparate treatment and no evidence that Law did not consistently follow a practice of waiting until the end of a week to effect terminations of employees. The discharge of Hutchins, then, was a proper exercise of business judgment and did not violate the law.

IV. THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

CONCLUSIONS OF LAW

1. The Respondent, Pine Lumber Cashway, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local 458, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization within the meaning of Section 2(5) of the Act.

3. By awarding a pay raise to an employee in order to discourage him for selecting the Union as his collective-bargaining representative, Respondent has violated Section 8(a)(1) of the Act.

4. By circulating a letter dated October 20, 1981, to its employees asking them to report union activity to it, Respondent has violated Section 8(a)(1) of the Act.

5. By coercively interrogating employees at its Ypsilanti, Michigan, location, Respondent has violated Section 8(a)(1) of the Act.

6. By coercively interrogating employees at its Brighton, Michigan, location, Respondent has violated Section 8(a)(1) of the Act.

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record in this proceeding, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[24]

The Respondent, Pine Lumber Cashway, Inc., Ypsilanti and Brighton, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Granting pay raises to any of its employees to discourage them from soliciting a union as their bargaining representative.

(b) Sending letters to its employees asking them to report union activity to it, or its officers or agents.

[19] A "dump load" or "banded load" is a large amount of lumber tied together with steel bands. According to Hutchins the practice at the Company was to raise the bed of the delivery truck and let the banded material slide off. However, both Law and Christie testified that if the customer requested, the driver was required to cut the bands and unload the lumber piecemeal from the truck to the location directed by the customer.

[20] Hutchins did not mention this exchange in his testimony.

[21] This is not inconsistent with Christie's discharge which took place on a Saturday.

[22] Law did not call Hutchins in, as he did with Christie and Fillion, because he had already decided to discharge him and had no reason to talk to him about the Union.

[23] Hutchins testified that he had signed his card on July 6, but kept it in his own possession until giving it to the union agents on September 30. There is nothing in the record which would tend to show that Respondent knew this.

[24] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(c) Coercively interrogating its employees about their union activities.

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Post at its locations in Ypsilanti and Brighton, Michigan, copies of the attached notice marked "Appendix."[25] Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Dlrector for Region 7, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

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[25] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."